BEFORE THE PUBLIC UTILITIES COMMISSION OF THE

STATE OF HAWAII

In the Matter of PUBLIC UTILITIES COMMISSION Instituting a Proceeding to Investigate the Implementation Of Feed–in Tariffs.	DOCKET NO. 2008-0273

BLUE PLANET FOUNDATION'S RESPONSE TO QUESTIONS 1-3 OF APPENDIX C TO THE SCOPING PAPER SUBMITTED BY THE STATE OF HAWAII PUBLIC UTILITIES COMMISSION, "FEED-IN TARIFFS: BEST DESIGN FOCUSING HAWAII'S INVESTIGATION" (NATIONAL REGULATORY RESEARCH INSTITUTE, DECEMBER 2008)

AND

CERTIFICATE OF SERVICE

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Blue Planet Foundation ("Blue Planet"), by and through its attorneys Schlack Ito Lockwood Piper & Elkind, hereby submits its response to Questions 1-3 of Appendix C to the Scoping Paper ("Legal Questions") submitted by the State of Hawaii Public Utilities Commission ("Commission") titled, "Feed-In Tariffs: Best Design Focusing Hawaii's Investigation" (National Regulatory Research Institute, December 2008) ("Scoping Paper").[1]

1. If the price associated with a feed-in tariff exceeds the utility's avoided cost, then by definition the utility's customers will incur higher costs than they would in the absence of the feed-in tariff. Please comment on the legal implications of this result. For example:

a) Is this result permissible under current Hawaii statutes?

RESPONSE:

An FIT price that exceeds avoided cost appears to be permissible under current Hawaii statutes, with the exception of section 269-27.2(c), Hawaii Revised Statutes ("section 269-27.2(c)"), as discussed below.

[1] Blue Planet's response to the Legal Questions is timely submitted. The Commission's letter dated December 11, 2008 requires the parties to respond to the Legal Questions within thirty (30) days of December 11, 2008. Pursuant to section 6-61-22, Hawaii Administrative Rules, the day of the act or event is excluded from the computation of time and if, as here, the last day of the period falls on a Saturday the period runs until the following weekday that is not a holiday. *Id.*

As a preliminary matter, Blue Planet does not dispute that if the term "cost" is restricted to its conventional meaning, i.e., the retail rate for electricity, it is possible that "customers will incur higher costs than they would in the absence of a feed-in tariff." *Id.* As a policy matter, however, consistent with the purpose of this proceeding the term "cost" may be more broadly understood to include the economic and public health and safety consequences associated with Hawaii's dependence on imported fossil fuel. For example, the State Legislature has found that:

> The global demand for petroleum and its derivatives has caused severe economic hardships throughout the State and threatens to impair the public health, safety and welfare. The State of Hawaii, with its total dependence on imported fossil fuel, is particularly vulnerable to dislocations in the global energy market.

Haw. Rev. Stat. § 196-1(1) (emphasis added); *see also* 2008 Haw. Sess. Laws, Act 208 at § 1 (Hawaii's "high petroleum dependence makes consumers extremely vulnerable to any oil embargo, supply disruption, international market dysfunction, and many other factors beyond Hawaii's control"). If the term "cost" is more broadly construed to include these harms, and if FITs reduce these costs, then FITs ultimately will not result in customers paying higher costs for electricity and it the assertion that "customers will incur higher costs than they would in the absence of a feed-in tariff" is not accurate. *Id.*

Assuming for purposes of this discussion that FITs may cause customers to incur higher costs in the short term, Blue Planet is not aware of any energy-related Hawaii statutes that would render this result impermissible (with the possible exception of section 269-27.2(c)). Michie's Hawaii Revised Statutes Annotated 2008 General Index, under the headings "Energy," "Renewable Energy," "Solar Power," and "Wind Energy" identifies the following Hawaii Revised Statutes chapters: 36, 46, 103D, 125C, 196, 201, 201N, 227D, 235, 241, 246, 277, 296,

304A, 343, 344, and 481B. A review of the relevant sections of these chapters does not indicate any statutory language rendering FITs impermissible in any manner.

To the contrary, the adoption of FITs by the Commission, which may in the short term impose higher costs on customers, appears to be consistent with and supported by several of Hawaii's energy-related statutes. FITs are described as "[a] set of standardized, published purchased power rates, including terms and conditions, which the utility will pay for each type of renewable energy resource based on project size fed to the grid." "Energy Agreement Among the State of Hawaii, Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs, and the Hawaiian Electric Companies" dated Oct. 20, 2008 at 1 ("Energy Agreement"). As noted in the Scoping Paper, policymakers use FITs to encourage resource development "by compensating developers in excess of a market-based avoided cost." *Id.* at 5.

A significant number of Hawaii's energy-related statutes require and promote the adoption of renewable and alternative energy.[2] Like these statutes, FITs are intended to promote the adoption of renewable and alternative energy. Although these statutes do not appear to explicitly authorize the short-term imposition of higher costs on customers for the sake of promoting renewable energy, taken as a whole these numerous legislative pronouncements in strong support of renewable energy may outweigh narrow objections based solely on avoided cost. Indeed, in a related context the Energy Agreement affirms that "the parties regard avoided

[2] *See, e.g.*, Haw. Rev. Stat. § 46-19 (counties may participate in the development of alternative energy resources); Haw. Rev. Stat. § 46-19.4 (agencies shall provide priority handling and processing of county permits required for renewable energy projects); Haw. Rev. Stat. § 196-1(finding an immediate need to formulate plans for the development and use of alternative energy sources); Haw. Rev. Stat. § 196-1.5 (agencies shall provide priority handling and processing of state permits required for renewable energy projects); Haw. Rev. Stat. § 196-41 (State of Hawaii Department of Land and Natural Resources and Department of Business, Economic Development and Tourism shall facilitate the private sector's development of renewable energy projects); Haw. Rev. Stat. § 201-12 (DBEDT shall develop a state program for the efficient development of new or alternative sources of energy); Haw. Rev. Stat. 201-12.5 (establishing within DBEDT the position of renewable energy coordinator to facilitate renewable energy development); Haw. Rev. Stat. ch. 201N (establishing a renewable energy facility siting process); Haw. Rev. Stat. § 269-27.2 (promoting utilization of electricity generated from nonfossil fuels); and Haw. Rev. Stat. ch. 269 Parts V and VI (establishing renewable portfolio standards and net energy metering).

energy cost based on fossil fuel prices for renewable energy contracts as a vestige of the past." Energy Agreement at 16.

Statutes authorizing the Commission's rate-setting functions further support the position that the result described in this question is "permissible." It is well established that the Commission is authorized to establish a "reasonable charge" to the consumer. Haw. Rev. Stat. § 269-16; *In re Honolulu Gas Co.*, 33 Haw. 487 (Haw. 1935). The Commission may also consider the need for increased renewable energy use in exercising its authorities and duties pursuant to Haw. Rev. Stat. § 269-6(b), and may provide incentives to encourage utilities to exceed their renewable portfolio standards or meet them ahead of time. Haw. Rev. Stat. § 269-94. Once the Commission has made an order, the order carries a presumption of validity, and one seeking to upset the order carries the heavy burden of making a convincing showing that it is invalid because it is unjust and unreasonable. *Jones v. Hawaiian Elec. Co.*, 64 Haw. 289, 639 P.2d 1103 (Haw. 1982).

For the foregoing reasons, Blue Planet submits that FITs which may cause customers to incur higher costs in the short term are generally permissible under Hawaii law.

b) Does HRS § 269-27.2 create a ceiling on the feed-in tariff price?

RESPONSE:

Assuming the Commission's FIT price determination falls under section 269-27.2(c),[3] that section appears to require the Commission to establish an FIT rate below avoided

[3] The FIT rate may fall outside the scope of section 269-27.2(c) insofar as FITs differ from individual contractual agreements between a utility and a supplier of electricity from non-fossil fuel sources. Section 269-27.2(c) may be read broadly to govern all utility purchase of non-fossil fuel electricity or narrowly to govern only such sales pursuant to individual contractual agreements. The latter interpretation is supported by the plain language of the statute. For example, the 2008 amendment to section 269-27.2 added language authorizing the Commission to adopt "guidelines and timetables" for the creation and implementation of "power purchase agreements," *id.* at 269-27.2(b), and the statute authorizes the parties to establish the purchase rate by mutual agreement. Haw. Rev. Stat. § 269-27.2(c). Each contract may therefore have a different rate. By contrast, FITs are not individual contractual agreements. Rather, they are tariffs established for broad classes or categories of suppliers. The rates will be

cost. Blue Planet therefore supports efforts to amend section 269-27.2(c) as may be necessary to eliminate the avoided cost restriction as a barrier to the establishment by the Commission of an FIT rate that exceeds avoided cost.

c) If so, how do the signatories to the Energy Agreement (or other parties to this proceeding) propose to demonstrate that each feed-in tariff price does not violate the statute?

RESPONSE:

Please see response to 1(b), above.

2. As with any administrative agency decision, a Commission decision approving a feed-in tariff must be supported with substantial evidence.

a) Focusing on the price term, what evidence is legally necessary? Consider these options, among others:

i) Evidence of actual costs to develop similar projects in Hawaii

ii) Generic (i.e., non-Hawaii) evidence of costs associated with each particular technology

iii) Evidence that the tariff price results in costs equal to or below the utility's avoided cost

b) By what process do the signatories (and other parties to this proceeding) propose to gather this evidence and present it the Commission, under the procedural schedule proposed by the signatories?

RESPONSE:

Blue Planet submits that the standard of evidence employed by the Commission in adopting and determining the price for FITs should not differ from the "substantial evidence" standard established under section 91-1, Hawaii Revised Statutes. That standard requires "such evidence as a reasonable mind might accept as adequate to support a conclusion." Op. Atty. Gen. No. 76-1 (1976). Under that standard, depending on the actual evidence it appears the three

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standardized and will not vary from supplier to supplier. Thus, although the Commission must ensure that FIT rates are "just and reasonable," because FITs differ significantly from individual contractual agreements arguably the Commission may do so under the general ratemaking statute, sections 269-16(a) and (b)(2)(A), Hawaii Revised Statutes, rather than under section 269-27.2(c).

types of evidence presented above (actual cost, generic cost, and avoided cost) may satisfy the evidentiary standard. (For the reasons given in response to question 1(b) and (c) above, however, it may be inappropriate for the Commission to require evidence that the tariff price results in costs equal to or below the utility's avoided cost.) It is expected that the parties may submit this evidence to the Commission in the ordinary course of this proceeding.

3. Assume the Commission does create feed-in tariffs, which entitle the seller to sell to the utility at the tariff price.

a) If the tariff price exceeds the utility's avoided cost, is there a violation of PURPA, provided the seller is relying on a state law right to sell rather than a PURPA right to sell?

RESPONSE:

For purposes of its response, Blue Planet restates the question as follows: "Whether, if the Commission adopts an FIT in this proceeding which includes a price for the purchase of electricity by a utility from a renewable energy producer that exceeds the utility's avoided cost, such an FIT will violate PURPA." The short answer to this question is that such an FIT does not appear to violate PURPA.

I. DISCUSSION

A. Background

1. Public Utility Regulatory Policies Act of 1978

In 1978, in response to rising energy costs and recent fuel shortages, Congress sought ways to conserve energy to reduce the nation's dependence on foreign oil and natural gas. *See Federal Energy Regulatory Comm'n v. Mississippi*, 456 U.S. 742, 745-46, 102 S.Ct. 2126, 2130 (1982). To encourage cogeneration and small power production,[4] Congress enacted section

[4] A "cogeneration facility" is a facility that produces energy and steam or forms of useful energy (such as heat) which can be used for industrial, commercial, heating or cooling purposes. *See* 16 U.S.C.A. § 796(18)(A). A "Small Power Production Facility" is an eligible solar, wind, waste, or geothermal facility which produces electricity. *See* 16 U.S.C.A. § 796(17).

210 of the Public Utility Regulatory Policies Act of 1978 ("PURPA"). Pub. L. No. 95-617,92 Stat. 3117 (1978) (codified as amended at 16 U.S.C. § 824a-3) ("Section 210"). In the past, an obstacle to the development of cogeneration and small power facilities had been the reluctance of utilities to purchase excess power from these facilities. *FERC v. Mississippi*, 456 U.S. at 750-51. Section 210 of PURPA sought to remove this obstacle by requiring that electric utilities purchase electrical energy from qualifying cogenerating or small power production facilities ("QFs").

In section 210, Congress directed the Federal Energy Regulatory Commission ("FERC") to prescribe rules requiring electric utilities to purchase power from and sell power to QFs, 16 U.S.C. § 824-3(a), at rates that are just and reasonable to the utility's customers, 16 U.S.C. § 824-3(b), and at rates which do not exceed the "incremental cost to the electric utility of alternative electric energy." *Id.* The "incremental cost of alternative electric energy" is defined as the cost the utility would have incurred if it had generated itself or purchased from another utility the same amount of power it purchased from the QF. 16 U.S.C. § 824a-3(d).

FERC subsequently adopted implementing regulations which require that each electric utility purchase energy made available from a QF. 18 C.F.R. § 292.303. Section 292.304 sets the rate of payment for such purchases equal to the utility's full avoided cost, unless the state regulatory authority determines that a lower rate is in the public interest and is sufficient to encourage cogeneration or small power production. *Id.* at § 292.304(b)(3). Section 210 has been interpreted to bar a state utility from establishing a price for the purchase of power from a QF above avoided cost. *See, e.g., Connecticut Light & Power Co.*, 71 F.E.R.C. ¶ 61,035, 61,153; 70 F.E.R.C. ¶ 61,012; *Kansas City Power & Light Co. v State Corp. Com.* 234 Kan. 1052 (1984). Finally, the regulations provide that "nothing in this subpart . . . limits the authority

of any electric utility or any [QF] to agree to a rate for any purchase . . . which differs from the rate . . . which would otherwise be required by this subpart." 18 C.F.R. § 292.301(b)(1).

2. Hawaii FIT

For purposes of this discussion, it is assumed that the FIT adopted by the Commission pursuant to this proceeding includes a price which is more than "the cost avoided by the utility when the utility purchase the electrical energy rather than producing the electrical energy" ("avoided cost"). Haw. Rev. Stat. § 269-27.2(c); 16 U.S.C. § 824a-3(d). An FIT adopted by the Commission with a price above avoided cost is referred to below as "HFIT."

B. Analysis

It appears that PURPA may be found to not preempt the HFIT.[5] In general, a state may enact its own laws or regulations as long as the federal authority has not preempted all state efforts to regulate in the area and as long as the state laws or regulations do not conflict with federal laws or regulations. *City of New York v. FCC*, 486 U.S. 57, 64, 108 S.Ct. 1637, 1642, 100 L.Ed.2d 48, 57 (1988). The traditional preemption analysis involves three related questions: (1) Whether the federal law expressly preempts state law on the subject?; (2) Did Congress legislate comprehensively, thus occupying the entire field of regulation and leaving no room for states to supplement federal law?; and (3) Does state law stand as an impediment to the accomplishment and execution of the full objectives of Congress? *See, e.g., FERC v. Miss.*, 456 U.S. 742; 102 S. Ct. 2126 (U.S. 1982).

With regard to the first question, PURPA contains no express prohibition on state law that would require utilities to purchase at a rate higher than avoided cost. A. Wenner,

[5] It is noted that although PURPA applies to electric utilities in Hawaii, the sale of electricity by a QF to the purchasing utility would not involve the "sale of electric energy at wholesale in interstate commerce," 16 U.S.C. § 824(b)(1), and thus Federal Power Act and Commerce Clause prohibitions of state regulation of interstate commerce would not bar the HFIT. *See Conn. Light & Power Co. v. Fed. Power Comm'n*, 324 U.S. 515, 523 (1945) (citing Section 201(b) of the Federal Power Act as amended in 1935); *City of Batavia v. F.E.R.C.*, 672 F.2d 64, 68 n.2 (D.C. Cir. 1982) (stating that FERC regulates wholesale transactions and states regulate retail transactions).

"FERC's *Connecticut Light & Power* Order Overstates PURPA's Preemptive Effect," *The Electricity Journal* (Aug.-Sept. 1995) ("Wenner") 52, 53. As for the second and third tests, the plain meaning of section 210(b) is that when the FERC, acting through a state commission, requires a utility to purchase pursuant to section 210(a), it may not require the utility to pay a rate in excess of avoided cost. As Mr. Wenner, a former FERC staff member in charge of drafting the rules, has commented:

> Nothing in the legislative history suggested or implied a congressional intent that if, absent PURPA, a state possessed authority to set rates for purchases at a higher level than FERC could require under PURPA, then that state law should be rendered void under PURPA. In other words, we understood that the limitations on the rates for purchases set forth in section 210(b) were limited to circumstances in which FERC (through a state commission or nonregulated utility) "required" the utility to purchase.

Id. (emphasis added).

PURPA's "negotiated contract" provision supports this interpretation of section 210(b). Under 18 C.F.R. § 292.301(b)(1), a utility and QF may "agree to a rate for any purchase . . . which differs from the rate . . . which would otherwise be required by this subpart." *Id.* This provision arguably permits a utility to purchase electricity at a rate above avoided cost. If FERC intended for the rates established pursuant to such negotiated agreements to be capped at avoided cost, it would have drafted section 210(b) accordingly, although it did not do so. Wenner at 53.

Consistent with the foregoing, the Texas Supreme Court has held that the avoided cost limit in section 210(b) applies only to "compelled purchases." *Public Utilities Comm'n of Texas v. Gulf States Utilities Co.*, 809 S.W.2d 201, 208 (Tex. 1991), *citing American Paper Inst., Inc. v. American Elec. Power Serv. Corp.*, 461 U.S. 402, 416, 103 S.Ct. 1921, 1930 (1983) ("The Commission's [full-avoided-cost] rule simply establishes the rate that applies in the absence of a waiver or a specific contractual agreement."); *In re Vicon Recovery Sys.*, 153 Vt. 539, 572 A.2d

1355, 1358 (1990) ("The rate provisions of § 292 apply only . . . in a situation where the electric utility is forced to purchase power from the small producer. The regulations make clear that utilities and [QFs] can agree to a rate different than would otherwise be mandated."); *Barasch v. Public Util. Comm'n*, 119 Pa. Commw. 81, 546 A.2d 1296, 1300 (Pa. Commw. Ct.) ("privately negotiated contracts setting rates for QF power are essentially outside the federal and state rules"), *modified*, 550 A.2d 257 (Pa. Commw. Ct. 1988) (holding that previous opinion was to have prospective effect only); *Bates Fabrics Inc. v. Public Utils. Comm'n*, 447 A.2d 1211, 1214 (Me. 1982) ("We conclude that the federal scheme expressly excludes from its reach all otherwise binding contracts between utilities and" QFs.); *but see* R. Gonzalez, Justice, Concurring and Dissenting Opinion at 212-16 (concluding that negotiated contracts are subject to the avoided cost limitation and the majority's ruling "would effectively destroy the avoided cost rule.").[6]

Similarly, PURPA is less likely to be found to preempt the HFIT if the HFIT is designed in a manner demonstrating that it lies outside the field Congress intended PURPA to occupy. For example, the HFIT may be available only to renewable electricity producers who do not seek to status as a QF under PURPA. Renewable electricity providers would have a choice between proceeding as a QF under PURPA or utilizing the HFIT. PURPA regulates only QFs. Such QFs produce energy usually intended for interstate distribution. Significantly, a report

[6] It is worth noting in this regard that, according to one commentator, Washington and Wisconsin have tariffs that pay more than the PURPA-defined "wholesale" rate. Washington has a net-metering program that pays up to $0.54/kWh for five years for generation with solar photovoltaics components that were assembled in the state. This tariff is well above the wholesale cost in the Pacific Northwest. Several utilities in Wisconsin also pay special incentive rates for small solar, wind, and biomass generators, rates above the wholesale cost of generation. Paul Gipe, "Frequently Asked Questions about Feed-in Tariffs, Advanced Renewable Tariffs, Renewable Tariffs, and Renewable Energy Producer Payments," at http://www.wind-works.org/FeedLaws/Feed-in%20Tariffs%20Frequently%20Asked%20Questions.doc. The price for California's feed-in tariff, however, is based upon the market price referent, or MPR, which is a "version of avoided cost." KEMA, Inc., "California Feed-in Tariff Design and Policy Options" (Sept. 2008) at 23. Similarly, the statute which may authorize feed-in tariffs in Vermont requires the Vermont Public Service Board to consider "least cost provision of energy service" in setting contract rates. W. Rickerson, *et al.*, "Feed-in Tariffs and Renewable Energy in the USA – A Policy Update (May 2008) at 10. Environmental externalities may be considered in the "least cost determination," however, possibly allowing for a rate above avoided cost. *Id.*

prepared by KEMA, Inc. on California feed-in tariff design and policy options, for the California Public Utilities Commission ("CPUC"), concluded that PURPA would not effectively cap CPUC's ability to set rates at avoided cost. KEMA, Inc., "California Feed-in Tariff Design and Policy Options" (Sept. 2008) at 54. The report posits that for PURPA to apply to a generator, the generator must register at the FERC as a QF. Generators are unlikely to do so if the FIT payment is capped at avoided cost. *Id.*

The HFIT may also utilize generation cost-based payments rather than value-based payments. *See* KEMA, Inc., "California Feed-in Tariff Design and Policy Options" (Sept. 2008) at 23-27. Avoided cost is one of the most basic methods to establish an FIT price. *Id.* at 23. By contrast, generation cost-based payments are an "alternative approach" to setting the FIT price. *Id.* The Energy Agreement memorializes the parties' agreement that the FIT to be adopted "should be designed to cover the renewable energy producer's costs of energy production plus some reasonable profit" rather than avoided cost. Energy Agreement at 16. This is echoed in the recently-submitted Joint Proposal on Feed-in Tariffs, which states that the HECO Companies[7] and Consumer Advocate[8] "support FIT rates that are designed to cover the producer's costs of energy production plus reasonable profit. *See* "Joint Proposal on Feed-in Tariffs of the HECO Companies and Consumer Advocate" (Dec. 23, 2008) ("Joint Proposal") at 12. Further, the consultant's report accompanying the Joint Proposal, prepared by KEMA, Inc. affirms that:

> The HECO Companies' position is that for the FIT to be successful and to also meet the HCEI goal of delinking energy payments from avoided cost, the FIT rates should be set at the cost of generation for each technology (plus profit), <u>regardless of whether it is above or below avoided cost.</u>

[7] Hawaiian Electric Company, Inc.; Maui Electric Company, Limited; and Hawaii Electric Light Company, Inc.
[8] Division of Consumer Advocacy, Department of Commerce and Consumer Affairs.

KEMA, Inc., "HECO Feed-in Tariff Program Plan" (Dec. 2008) at 23 (emphasis added).

The HECO Companies' and Consumer Advocates' public support for an FIT price above avoided costs lends further support to the contention that the HFIT would constitute permissible state regulation of utility matters that falls outside the regulatory purview of PURPA. (In addition, such representations made by any party to this proceeding may also be found to constitute an implied waiver or estoppel with regard to their right to subsequently mount a legal challenge the Commission's adoption of the HFIT with a price above avoided cost price.) The embrace of an FIT with a price above avoided cost accords with the decreased reliance in recent years on PURPA's mandatory purchase requirement. *See generally*, M. Hornstein and J.S. Stoermer, *The Energy Policy Act of 2005: PURPA Reform, the Amendments, and Their Implications*, 27 Energy L. J. 25, 36 (2006) (concluding that PURPA's ongoing impact on the electricity industry will "diminish" and is "likely to be less powerful and less relevant[.]"). Indeed, section 34 of the Energy Agreement proposes to exempt Hawaii from PURPA to allow utilities to consider independent power producer proposals under the State's Comprehensive Bidding Framework. *Id.* at 41.

For all of the foregoing reasons, it appears that if the Commission adopts an FIT in this proceeding which includes a price for the purchase of electricity by a utility from a renewable energy producer that exceeds the utility's avoided cost, such an FIT may not be found in violation of PURPA.

b) If the tariff price exceeds the utility's avoided cost (as calculated prior to the existence of the tariff), could a seller assert a PURPA right to a sale at the tariff price, on the grounds that the utility now has a new "avoided cost" equal to cost it would have incurred under the state-mandated feed-in tariff?

RESPONSE:

If PURPA does not preempt the HFIT, then a renewable energy producer may have the option of seeking to sell electricity to the utility either as a QF pursuant to PURPA or through the HFIT independently of PURPA. If the sale occurs under PURPA, the avoided cost determination must include the least avoided cost of any alternative available to the utility. Assuming there is a least avoided cost alternative lower than the HFIT price, the HFIT price would not be considered the avoided cost for purposes of the sale. If PURPA preempts the HFIT, the issue is moot.

c) If the price associated with a feed-in tariff is less than the utility's avoided cost, what benefit does the tariff offer the developer that is not already available under PURPA?

The benefits the HFIT would offer to a renewable electricity developer and producer, which may not be available under PURPA, include reduction of project developer costs, risks and complexity without significantly increasing ratepayer cost. KEMA, Inc., "HECO Feed-in Tariff Program Plan" (Dec. 2008) at 1. FITs reduce developer cost and risk because they are standard offers available without recourse to costly and lengthy competitive processes, resulting in lower development costs, a reduced rate of contract failure, and an increased ability for small projects to develop renewable energy systems. FITs also create a high degree of investor security, lower financing costs, and may in Hawaii generate savings insofar as generation costs for certain technologies may be below current avoided cost levels. *Id.* at 1-2.

d) **Please offer any other comments concerning the legal and practical relationship between the feed-in tariff and existing PURPA rights and obligations.**

RESPONSE:

No further comments.

DATED: Honolulu, Hawaii, January 12, 2009.

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In the Matter of PUBLIC UTILITIES COMMISSION Instituting a Proceeding to Investigate the Implementation Of Feed–in Tariffs.	DOCKET NO. 2008-0273

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I HEREBY CERTIFY that on this date a copy of the foregoing document was duly served upon the following individuals by placing a copy of same in the United States Mail, postage prepaid, addressed as follows:

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